



SiteOne v. Giordano - Deficient Discovery and Supplemental RFPs

From Colleen O'Neil <Colleen@mmlaborlaw.com>

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To Gibbs, J. Evan <Evan.Gibbs@troutman.com>; Gorman, Daniel E. <Daniel.Gorman@troutman.com>; Kent, Paris L. <Paris.Kent@troutman.com>; kmulry@FarrellFritz.com <kmulry@FarrellFritz.com>

Cc Richard Milman <rich@mmlaborlaw.com>; Michael Mule <MichaelMule@mmlaborlaw.com>; James Orioli <James@mmlaborlaw.com>

1 attachment (135 KB)

2024 11 27 D's 2nd Set of RFP to P.pdf;

Evan -

We have reviewed the documents that SiteOne has produced to date. Based on that review, we believe that SiteOne's production is deficient, as set forth below. Please provide us with your availability to meet and confer within the next week regarding the issues identified below.

Outstanding Discovery - Text Messages

1. On September 13, 2024, Defendants provided SiteOne a list of 24 SiteOne principals, officers, directors, managers, and/or others in the control of SiteOne whose cell phones needed to be examined for text messages responsive to a variety of the Defendants' discovery demands. SiteOne objected to the demand on the ground that the demand supposedly was overly burdensome and not proportional to the needs of the case. Defendants disagree. However, in an effort to compromise, Defendants have now reduced the number of individuals whose phones need to be examined to thirteen, namely: (i) Doug Black; (ii) Lynn Fracassi; (iii) Brian Kersnowski; (iv) Kevin Peattie; (v) Brian Hoffman; (vi) Anthony Catalano; (vii) Alex Trauma; (viii) Phil Sausto; (ix) Anthony Ferrante; (x) Greg Thistle; (xi) Gerard Passaro; (xii) Joe Ketter; and (xiii) Jerry Justice.

Defendants request the production all text messages from the above-listed individuals for the time period from September 1, 2023 to present referencing in any manner:

- Don Caroleo
- Nick Giordano
- Vic Caroleo
- Rose Casper
- Scapes Supply

2. Deficient Discovery Responses

- RFP Nos. 8, 9 - SiteOne states that it is "not aware of any documents in its possession, custody or control" that are responsive to RFP Nos. 8, 9. SiteOne's August 1, 2024 search term summary ("Search Terms") fails to indicate that any search was conducted with respect to either of these demands. With that in mind, please disclose what steps, if any, SiteOne

undertook to locate documents responsive to each of these demands, and, to the extent SiteOne maintains that no responsive documents exist to either or both demands, please provide a sworn statement to that effect.

- RFP No. 20 - SiteOne states that it will produce documents responsive to RFP No. 20, "to the extent such documents exist." SiteOne's Search Terms fail to indicate that any search was conducted with respect to this demand. With that in mind, please disclose what steps, if any, SiteOne undertook to locate documents responsive to this demand. To the extent SiteOne conducted a search but determined that no responsive documents exist, please provide a sworn statement to that effect. To the extent responsive documents do exist and were produced, please identify such documents. To the extent responsive documents exist but were withheld for privilege, please provide a privilege log reflecting as much.
- RFPs Nos. 25, 26, 64, 68, 81, 90, 97, 98, 100, 101, 102, 103, 116, 117 - SiteOne states that it will produce documents responsive to RFPs Nos. 25, 26, 64, 68, 81, 90, 97, 98, 100, 101, 102, 103, 116, 117, "if any." SiteOne's Search Terms fail to indicate that any searches were conducted with respect to these demands. With that in mind, please disclose what steps, if any, SiteOne undertook to locate documents responsive to each of these demands. To the extent SiteOne conducted a search for any of these demands but determined that no responsive documents exist, please provide a sworn statement to that effect. To the extent documents responsive to any of these demands do exist and were produced, please identify such documents. To the extent documents responsive to any of the demands exist but were withheld for privilege, please provide a privilege log reflecting as much.
- RFPs Nos. 30, 32, 36, 37, 56, 57, 92, 111, 114, 115 - SiteOne states that it will produce documents responsive to RFPs Nos. 30, 32, 36, 37, 51, 54, 56, 57, 92, 111, 114, 115, "if any." SiteOne's Search Terms indicate that limited searches were conducted for limited custodians with respect to each of these demands. It is not clear if any documents were produced in response to each of the demands. With that in mind, to the extent documents responsive to any of these demands were produced, please identify such documents. To the extent documents responsive to any of the demands exist but were withheld for privilege, please provide a privilege log reflecting as much.
- RFPs Nos. 51, 54 - SiteOne states that it "will produce" non-privileged documents responsive to RFPs Nos. 51, 54. SiteOne's Search Terms indicate that limited searches were conducted for limited custodians with respect to each of these demands. It is not clear if any documents were produced in response to each of the demands. With that in mind, to the extent documents responsive to any of these demands were produced, please identify such documents. To the extent documents responsive to any of the demands were withheld for privilege, please provide a privilege log reflecting as much.

3. Deficient Search Terms/Custodians

To the extent that SiteOne conducted searches in response to any RFPs, it applied limited search terms to a limited number of custodians. At this time, to ensure that all responsive documents are identified and produced, Defendants request that SiteOne search the emails of the same 13 custodians listed above - (i) **Doug Black**; (ii) **Lynn Fracassi**; (iii) **Brian Kersnowski**; (iv) **Kevin Peattie**; (v) **Brian Hoffman**; (vi) **Anthony Catalano**; (vii) **Alex Trauma**; (viii) **Phil Sausto**; (ix) **Anthony Ferrante**; (x) **Greg Thistle**; (xi) **Gerard Passaro**; (xii) **Joe Ketter**; and (xiii) **Jerry Justice** - for the time period from September 1, 2023 to the present, using the below search terms, and produce all relevant hits, to the extent not privileged:

- "Caroleo"
- "Vic"
- "Victor"
- "Don"
- "Donnie"
- "Donny"
- "Nick"
- "Nicholas"
- "Giordano"
- "Scapes"
- "Rose"
- "Rosie"
- "Casper"
- "Janet"
- "Damiano"

Supplemental RFPs

In addition, attached hereto is Defendants' Second Set of Document Demands to Plaintiff.

Regards,
Colleen

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